

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JAMES A. HEPBURN,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)
_____)

PCHB No. 78-244

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

This matter, the Motions for Summary Judgment brought by each party herein, came for hearing before the Pollution Control Hearings Board on February 26 in Yakima and on April 3, 1979 by telephone conference call. Appellant was represented by his attorney, Larry Tracy; respondent was represented by Robert Mack, Assistant Attorney General. Having considered the pleadings, the affidavits of Bruce A. Cameron and James A. Hepburn, the Memoranda submitted by each party and the files and record herein, and it appearing that there is no genuine issue as to any material fact, the Board concludes that

DA/LB

1 the appellant's motion should be denied and that the respondent's
2 motion should be granted.

3 Provision No. 12 of the permit (G3-23909 (QB-368)) which authorizes
4 the withdrawal of artificially stored ground water from the Quincy
5 Subarea, upon which this case is based, provides that:

6 This permit only authorizes water to be used
7 on the lands described above. This permit may
8 be amended to allow for a change in place of
9 use if it can be clearly shown that the
10 original land description was erroneous or
11 if development and irrigation of the originally
12 authorized lands has taken place. No such
13 amendment can be made without the approval
14 of the department. (Emphasis added)

11 The first sentence of the provision states what WAC 173-134
12 -060(2)(f) provides, that is, permits for artificially stored
13 ground water shall pertain to a specific point of withdrawal and
14 place of use. The sentence merely reaffirms the requirement.¹
15 There is no reason to strike the sentence as a matter of law.

16 The second sentence allows for amendment to the permit to allow
17 a change in place of use if 1) the original land description was
18 erroneous or 2) if development and irrigation of the originally authorized
19 lands have taken place. Other circumstances in addition to the
20 foregoing may be considered by the department; the sentence is
21 not exclusive.

22 The third sentence is not contested by the parties.

23 In summary, provision No. 12 does not appear to be unreasonable
24

25 1. The department has authority to do likewise under the
26 surface water code, e.g., RCW 90.03.260; .380.

1 or to limit the grounds upon which the department can approve a request
2 for a change in place of use for the authorized water withdrawals
3 Thus, respondent has not limited its consideration on an application
4 for a change in the permit nor has it added any provision which lies
5 outside of its statutory authority. Having concluded such, now therefore,

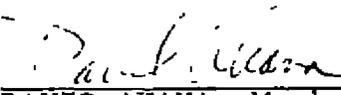
6 IT IS ORDERED that the appellant's Motion for Summary Judgment
7 is denied; the respondent's Motion for Summary Judgment is granted, and
8 appellant's appeal is dismissed.

9 DATED this 5th day of ~~May~~^{June}, 1979.

10 POLLUTION CONTROL HEARINGS BOARD

11 
12 DAVE J. MOONEY, Chairman

13 
14 CHRIS SMITH, Member

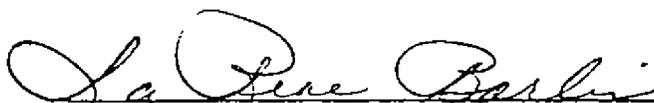
15 
16 DAVID AKANA, Member

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 11th day of June, 1979, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

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